



Exhibit No. 115
Zoning Ordinance Rewrite
PH Dates: 6/16 & 6/30/08

WASHINGTON AREA NEW AUTOMOBILE DEALERS ASSOCIATION

5301 Wisconsin Avenue, N.W. • Suite 210 • Washington, DC 20015
202.237.7200 Voice • 202.237.9090 Fax

Via Hand Delivery and E-mail

September 19, 2008

The Honorable John Britton
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

Re: City of Rockville Final Draft Zoning Ordinance
Recommended Changes to motor Vehicle Sales Use Development Standards

Dear Mayor Hoffmann and Council Members:

On behalf of the Washington Area New Automobile Dealers Association (WANADA), we

pending Final Draft of the Comprehensive Zoning Ordinance. We thank the Mayor and Council for reopening the record on the Draft Zoning Ordinance to allow for our comments to be entered into the record. We also support Larry Gordon's letter to you of September 17, 2008, which we are enclosing for your information.

As we stated before, our members are principally concerned that the proposed revisions to the Final Draft Zoning Ordinance does not adequately take into account the nature and limitations of the automobile business. We believe land use for dealerships requires a special focus in Rockville's zoning policy analysis, since auto dealerships differ from other businesses in many ways.

What follows are our specific concerns:

- **Grandfather Provisions for Existing Dealerships**

A strong grandfathering provision is essential to protect the investment of our members. We believe that, at a minimum, a proposed expansion to 5% of the existing gross floor area should be allowed before triggering application of new development standards to such expansions. As the years go by, improvements and additions will be required for existing dealerships. We suggest inclusion of the grandfathering language which clarifies the various triggering stages, as recommended by Larry Gordon. At the very least, we suggest a minimum expansion trigger of 10% for car dealerships and the grandfathering of these additions using the current standards.

- **Additional Building Height**

A key issue for our industry is the potential for vertically oriented, mixed-use redevelopment options on existing dealership locations. To date, only in extremely limited, high density areas with limited types of auto manufacturers is this form of development possible. Parking structures in new mixed-use projects are very expensive. Dealer display and service, no less than customer accommodations, require substantial amounts of parking. As such, we support additional height to 120 feet in the MXCD

-more-

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zone, as proposed by Larry Gordon. (Sites must be recommended by a Sector, Master Plan or Project Plan and must include a motor vehicle sales operation.)

- **Public Open Space**

We appreciate the staff responding to the safety and security concerns we had identified in our earlier letter. We cannot support the creation of "public" open space in a motor vehicle operation. Open space would endanger the public, our customers and our operations. We suggest the following amendment to the current draft:

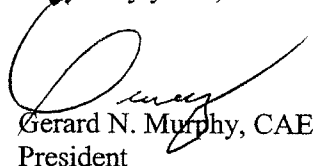
25.17.01 – Public Use Space

- Purpose* – Public use space requirements are intended to promote an appropriate balance between the built environment and public parks and other open spaces intended for respite from urban development, and to protect natural features and protect and preserve the character of the City.
- General Requirements* – Where provided, such space must be accessible for use and enjoyment by the general public, and may include space so located and treated as to enhance the amenity of the development by providing landscaping features, screening or a general appearance of openness. The Approving Authority may allow reasonable limitations on access to the public use space to meet safety or security concerns, *especially in a motor vehicle development.*

WANADA is available to work with the City of Rockville to keep automobile sales and services an integral part of the future of Route 355. We realize the time constraints under which the City is proceeding and appreciate your attentions to our concerns.

Thank you for your consideration.

Very truly yours,


Gerard N. Murphy, CAE
President

Cc: Council Member John Britton
Council Member Piotr Gajewski
Council Member Phyllis Marcuccio
Council Member Anne M. Robbins
Scott Ullery
Sondra Block, Esq.
Susan Swift
James Wasilak
Deane Mellander
Perry Berman
Esther Gelman

Attachment/



Via E-mail

October 1, 2008

The Hon. Susan R. Hoffmann, Mayor
And Council Members
Rockville City Hall
111 Maryland Avenue
Rockville, MD 20850

Re: City of Rockville Draft Zoning Ordinance
Substitution Letter Recommending Changes Affecting More Vehicle Sales Uses

Dear Mayor Hoffmann and Council Members;

Washington Area New Automobile Dealers Association ("WANADA") previously sent you a letter dated September 19, 2008. On behalf of WANADA, I am submitting this letter as a substitution of that letter, since the September letter contained certain inadvertent discrepancies with our positions. Kindly disregard WANADA's September 19, 2008 letter and please give consideration to my following comments.

As WANADA has previously stated, their members are principally concerned that the proposed revisions to the Draft Zoning Ordinance do not yet adequately take into account the nature and limitations of the automobile business. They believe that land use recommendations for dealerships require a special focus in Rockville's zoning and land use policies, since auto dealerships differ from other businesses in many ways.

The following are my specific issues and recommendations for your consideration;

- **Grandfather Provisions for Existing Dealerships**

A strong grandfather provision is essential to protect the substantial existing investment of WANADA's members. I believe a minimum building expansion of 10% of the existing gross floor area should be allowed before triggering application of new development standards to such expansions. As the years go by, improvements and additions will be required for existing dealerships. Such enhancements will benefit the dealerships, their customers, and the neighboring Rockville community. By allowing, at a minimum, expansions of 10% of pre-existing gross FAR without triggering new development standards, the City will be fostering a win/win situation. Additionally, I suggest that the grandfathering provisions of the new Ordinance be clarified to better describe the circumstances under which the new Ordinance standards will be applied.

- **Additional Building Height**

A key issue for our industry is the potential for vertically oriented, mixed-use redevelopment options on existing dealership locations. To date, only in extremely limited, high density areas with certain very high-end dealerships, is this form of development possible. Parking structures in new mixed-use projects are very expensive. Dealer display and service, no less than customer accommodations, require substantial amounts of parking. As such, I support allowing additional building heights of up to 120 feet in MXCD zone, where expressly recommended by the Mayor and Council in a Sector, Master or Project Plan.

- **Public Open Space**

I appreciate the staff responding to the safety and security concerns we identified in our September 11, 2008 letter. WANDA cannot support any requirement for "public" open space at a motor vehicle operation. On-site public open space would endanger the public, our customers, and our operations. I suggest the following underscoring amendment to the current Zoning Ordinance Draft:

25.17.01 – Public Use Space

- a. *Purpose* – Public use space requirements are intended to promote an appropriate balance between the built environment and public parks and other open spaces intended for respite from urban development, and to protect natural features and protect and preserve the character of the City.
- b. *General Requirements* – Where provided, such space must be accessible for use and enjoyment by the general public, and may include space so located and treated as to enhance the amenity of the development by providing landscaping features, screening or a general appearance of openness. The Approving Authority may allow reasonable limitations on access to the public use space to meet safety or security concerns, especially in a motor vehicle development.

WANADA remains available to work with the City of Rockville, mindful of the imperative of keeping automobile sales and services an integral part of the future of Route 355. WANDA and I realize the time constraints under which the City is proceeding and appreciate your attention to our concerns.

In closing, you may consider the aforementioned input supplementary to that provided by Larry Gordon, Esq. of Shulman/Rogers by letter dated September 17, 2008. A copy of Mr. Gordon's letter is attached for your convenience.

Thank you for your consideration.

Very truly yours,

Signed

Perry Berman

CC: Council Member John Britton
Council Member Piotr Gajewski
Council Member Phyllis Marcuccio
Council Member Anne M. Robbins
Scott Ullery
Sondra Block, Esq.
Susan Swift
James Wasilak
Deane Mellander
Gerard N. Murphy
Esther Gelman
Larry Gordon, Esq.

Attachment

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October 1, 2008

Patricia Harris
301 215 6613
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Mayor Susan Hoffmann and Members of the City Council
City of Rockville
111 Maryland Avenue
Rockville, Maryland 20852

Re: Zoning Ordinance Revision -- Setbacks in the MXE Zone

Dear Mayor Hoffmann and Members of the City Council:

This letter is submitted on behalf of GEICO, the owners of 2800 Tower Oaks Boulevard (the "Property") which is proposed to be rezoned to the MXE Zone. As you may be aware, the Property is currently zoned I-3 and improved with a building that GEICO uses for warehouse purposes and other incidental uses. However, the nine-acre site is ideally situated for office use and GEICO has had several meetings with City Staff in connection with the redevelopment of the Property, with the potential relocation of GEICO's headquarters to the Property in mind. It is for this reason that we have carefully monitored and participated in the RORZOR process on behalf of GEICO.

The purpose of this letter is to focus on one remaining, critical provision of the MXE development standards. The provision in question is Section 25.13.05b.2.(c) (hereinafter referred to as Subsection b.2(c)) dealing with the setback requirements in the MXE Zone. Not only is this provision in direct conflict with the development standards table set forth in Subsection 25.13.05 b.1 (hereinafter referred to as Subsection b.1.), it is also contrary to basic planning principles.

More specifically, the Subsections (b.2(c)) provides as follows:

Buildings that exceed 45 feet in height, and do not abut any land existing or planned for a Single-Unit Detached or Semi-Detached Residential Zone, must be set back from the side and rear lot lines by a distance at least equate to one-half (1/2) the height of the building. (Emphasis added).

In contrast, the development standards table set forth in Subsection b.1 provides that no rear or side setback is required in the MXE zone if the site does not abut a residential zone.

For the reasons set forth below, we would recommend that Subsection b.2(c) be amended to eliminate the words "do not".¹

The development standards in Subsection b.1 are based on solid planning principles. There is simply no need for predetermined distances between commercial buildings in a zone such as the MXE Zone. This is especially true given that at the very least, Site Plan approval by the Planning Commission is required in the MXE Zone.² The Site Plan approval process provides the Planning Commission with the ability to evaluate each individual property on a case-by-case basis to determine the appropriate side or rear yard setback.

The language in Subsection b.2.(c) directly undercuts the development standards in Subsection b.1. by requiring a significant setback for those commercial buildings abutting other commercial buildings. Imposing side and rear setbacks that are at least one-half the height of the building reinforces a dated suburban planning model that RORZOR was intended to address. The setback provisions as proposed force an office building to be located in essentially the center of a parcel. The result is often the development of an area which provides no context and where individual buildings fail to relate to adjacent development. The development of such areas lack a meaningful streetscape and thus do not promote walkability. Importantly, the type of development that the proposed setback standards would create is contrary to the following purposes set forth in the purpose clause of the mixed use zones:

- To create high-quality neighborhoods and zones that are attractive and pedestrian-oriented;
- To allow for a mix of different types of land uses in a compatible manner, both vertically and horizontally;
- To minimize automobile use and maximize the use of public transportation, bicycle, and pedestrian access within the City;
- To promote a variety of uses in close proximity to each other in compliance with the Master Plan's recommendations;
- To provide for more efficient land use, particularly a development pattern more flexible in adjusting to market conditions and local growth fluctuations.

Moreover, a comparison of Subsection b.1 and b.2 (c) suggests an oversight with respect to this issue. Subsection b.2(c) notes a setback requirement of 1/2 the distance to the property line where a property does abuts residential property. If the Planning Commission intended for the same setback requirement to apply to buildings that do not abut residential uses it would have provided for all setback requirements to be set forth in the development standards table. Based

¹ The elimination of the words "do not" make Subsection b.2(c) duplicative of Subsection b.1, thus eliminating the need for Subsection b.2(c).

² Depending on the size of the development, Project Plan approval as well as Site Plan approval may be required, thus necessitating review by the Mayor and Council in addition to the Planning Commission.

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on this, we can only conclude that the intention of Subsection b.2(c) was to impose less onerous setback requirements on commercial buildings that abut other commercial buildings than on commercial buildings that abut a residential structure.

The setback issue has a significant impact on commercial buildings in the MXE Zone. For these reasons we request that the Mayor and Council give serious consideration to the request to modify Subsection b.2(c). We thank you for your attention in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Pat H.', with a stylized flourish at the end.

Patricia A. Harris

cc: Mr. Scott Ullery
Ms. Susan Smith
Mr. James Wasilak
Mr. Deane Mellander
Mr. Steve Martz

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